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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

ORIGINAL

In the Matter of )  
 )  
Implementation of Section 309(j) ) PP Docket No. 93-253  
of the Communications Act )  
Competitive Bidding )

To: The Commission

**COMMENTS**

Liberty Cellular, Inc. d/b/a Kansas Cellular ("Liberty"), by its attorneys, and pursuant to Section 1.415 of the Federal Communications Commission's ("FCC" or "Commission") rules, hereby submits its Comments in the above-captioned proceeding.<sup>1/</sup> Liberty is a cellular system licensee which operates exclusively in Rural Service Areas in the state of Kansas. Liberty is owned by approximately 29 stockholders who are rural independent local exchange carriers (or affiliates thereof) in the state of Kansas. Liberty and its affiliates are also prospective applicants for licenses in the Personal Communications Services ("PCS").

**Introduction**

1. The NPRM invites comments on a wide range of questions related to the adoption of rules to implement the Commission's competitive bidding authority. Because Liberty is essentially a business owned by a group of small and rural area businesses,

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<sup>1/</sup> Notice of Proposed Rule Making, PP Docket No. 93-253, 58 FR 53489, October 15, 1993 ("NPRM").

Liberty is particularly interested in the aspects of the NPRM which affect the licensing of PCS for rural areas, and the opportunity for existing rural area service providers such as Liberty and its owners to participate meaningfully in the competitive bidding process. The subjects of specific concern to Liberty are addressed in the following paragraphs.

**I. Bidding for Groups of Licenses - No Combinatorial Bids for BTAs**

2. The NPRM proposes a system by which sealed bids could be received from parties who desire to bid on groups of Major Trading Area ("MTA") licenses. The possibility that sealed combinatorial bids for groups of Basic Trading Area ("BTA") licenses is not foreclosed by the NPRM. The concept of combinatorial bidding is viewed as a way to facilitate efficient aggregation of licenses for parties who consider the licenses to have more value as a group than individually.<sup>2/</sup>

3. Liberty does not oppose the use of sealed combinatorial bids for groups of MTA licenses. It is expected that only major corporations with access to large pools of capital will be able to compete successfully for the MTA licenses, either individually or in combination.

4. However, the BTA licenses should not be awarded based on combinatorial bids.<sup>3/</sup> The BTAs offer the most opportunity to rural

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<sup>2/</sup> NPRM, para. 57 et seq.

<sup>3/</sup> If the Commission ultimately adopts a combinatorial bidding system for BTAs, it should not deny applicants at the oral auctions an opportunity to resume oral bidding after the sealed bids are opened.

area residents to benefit from PCS, Local Multipoint Distribution Service and other new services to be offered over facilities that will be licensed by competitive bidding. If BTAs are licensed in combination with other BTAs in the same MTA, it is obvious that the greatest value will be attached to those BTAs within the MTA which encompass the major population centers. The less densely populated BTAs may be incidental to the transaction. Small and medium sized businesses who could expect to bid competitively for individual BTAs but who lack the resources to compete for groups of BTAs will be effectively excluded from the process. As a result, combinatorial bidding for the BTAs will diminish the opportunities of those small and medium sized bidders who are most interested in the rural BTAs, and deprive businesses and residents in the rural BTAs of the benefits of service from the companies most sharply focused on their needs. For these reasons the Commission should not permit combinatorial bidding for any BTA licenses.<sup>4/</sup>

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<sup>4/</sup> Liberty submits that the Commission should not settle on a compromise involving combinatorial bidding for BTAs by allowing some BTA licenses to be acquired through combination bids and others only through individual bids. For example, if the Commission limited combinatorial bidding for BTAs to wideband PCS license blocks F and G, the equivalent of national licenses could be purchased by acquiring all BTAs in all MTAs, thereby undermining the ability of small and medium sized businesses to compete for licenses in rural BTAs. Many highly qualified parties such as Liberty will probably not qualify as "designated entities" and will be foreclosed from applying for PCS blocks C and D. If the Commission were to allow combination bids for any other PCS wideband BTA licenses (i.e. blocks E, F or G) it would provide a third opportunity to large and highly capitalized corporations to acquire a nationwide license and effectively eliminate the medium sized companies from the opportunity to acquire sufficient spectrum to offer a useful service in rural BTAs. Such a plan would injure  
(continued...)

## **II. Designated Entities**

5. Under the auction design structure enacted by Congress, the Commission is to adopt rules which allow rural telephone companies, small businesses and minority groups to participate in the provision of spectrum-based services. The Commission is in need of establishing a definition for each type of designated entity, and determining what preferential treatment should be accorded to the qualifying parties.

### **A. Qualifying Criteria**

6. As the Commission considers appropriate qualifying criteria for designated entity status, Liberty requests that the Commission adopt two limitations on the eligibility of minority applicants (including women) for preferential treatment as a designated entity. First, it is suggested that a qualifying minority applicant must certify control (i.e. with least a 50.1 equity interest) of such applicant by minority group persons with a principal residence in the area applied for as of the date of the Commission's Public Notice which announces the filing window for applications for the area.<sup>5/</sup> Second, Liberty suggests that a

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<sup>4/</sup>(...continued)

both the companies who wish to apply for rural BTAs and the public who would benefit from the focus of a rural licensee's efforts to serve those areas.

<sup>5/</sup> Liberty does not intend to propose a residence limitation on qualifying minority applicants that would not be imposed equally upon other qualifying designated entities (i.e. rural telephone companies and small businesses). Conversely, if there is no local residence requirement for preferred minority applicant qualification, there should be no local requirement for the other designated entities.

qualifying minority applicant must comply with the same financial limitations which are applicable to small businesses who qualify for preferential status. The effect of limiting the eligibility of minority applicants under these criteria is to assure that only those minorities who are economically disadvantaged by the competitive bidding process, and those who have a nexus to the location of the communications system and therefore who are personally available for management and control decisions, are afforded the special benefits of a designated entity.

**B. The Benefits of Designated Entity Status Should Apply to All License Blocks**

7. If the successful bidder for any frequency block in any radio service is a qualified designated entity, the benefits accorded to such status should be granted to the entity. The entity should be permitted to benefit from flexible payment options. However, designated entities should not be relieved of the need to submit upfront deposits or furnish a substantial payment following the bidding process.

**III. Application and Bidding Process**

**A. Initial Application With Upfront Payment and Financial Qualifications Showing**

8. **Short Form Application.** Prior to the bidding session, all applicants should be required to submit a short form application, during a one-day filing window, to register to participate in a PCS auction. The short form should identify the applicant's ownership and the market and frequency block for which the applicant will bid. Any applicant claiming a designated entity

status should be required to certify its eligibility qualifications on the short form.

9. **Upfront Payment.** At the time the short form application is filed, all applicants should be required to submit a check for the upfront payment. The check should be deposited by the FCC into an interest bearing account. Any dishonored checks should result in disqualification of the applicant. The amount of the required upfront payment should not be left for calculation by the applicant; the Commission should publish the exact amount required in the Public Notice which announces the filing date. Liberty submits that the upfront payment should not be a nominal amount, as it is one useful means to eliminate potential bidders who are financially unqualified. For the BTAs, Liberty suggests that a flat fee be specified for each license block, rather than a payment which varies according to the population of the area and amount of spectrum in the block. For example, the upfront payment amount could be \$50,000 for each BTA, except that the amount payable by designated entities should be less but still substantial (e.g. \$25,000). The upfront payment should be returned with interest to unsuccessful bidders, but forfeited if an applicant who is the high bidder fails to qualify for the license.

10. **Financial Qualifications Showing.** The initial application should also include documentation of the applicant's financial ability to construct and operate at least a small PCS system, according to rules comparable to those in effect in early

1993 for cellular unserved area applicants.<sup>6/</sup> The absence of a financial qualifications showing would allow parties without any financial capability, beyond the upfront deposit, to succeed in the bidding session, then offer ownership interests (small or otherwise) to unsuccessful bidders in the same auction, or even to non-participants in the auction. The winner could sell ownership a piece at a time simply to meet each payment obligation. The effect of allowing completely unqualified parties to bid is not only unfair to others who arrange capitalization and financing prior to the bidding, but it is not conducive to the construction of a high quality telecommunications system that will serve the public interest. All information in the application should be available for public inspection prior to the bidding.

**B. Supplemental Application for Winning Bidders**

11. After submitting a high bid, an applicant should be required to supplement its application with any amendments to the initial application. For PCS applications in particular, there appears no need for a specific technical proposal. The submission of details for site specific PCS facilities is unproductive because there is not a sufficient amount of information available to applicants about equipment performance. The penalty of license forfeiture for licensees who do not meet the system construction benchmarks after five, seven and ten years is sufficient to assure that licensees will develop a workable technical proposal.

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<sup>6/</sup> See Section 22.917(f) of the Commission's rules.

**C. Sequence of Bidding**

12. The Commission should auction all frequency blocks within a given MTA before proceeding to auction licenses in the next MTA. The blocks within an area should be auctioned on the same day in order to avoid a headstart advantage to the first successful bidder. For example, all PCS frequency blocks, in the order of A, B, C, D, E, F and G, should be auctioned on a single day for a given MTA or BTA. The MTAs (and BTAs within the MTA) should be auctioned in the order of largest to smallest, by population. This approach will allow service to be introduced first in the most populated areas where public demand should stimulate the development of equipment and design of novel services.

**Conclusion**

13. Liberty recognizes the difficult task which the Commission faces in adopting equitable rules to implement the competitive bidding process under the time limitations imposed by Congress. As a company focused on the needs of rural Kansas communities, Liberty asks the Commission to adopt rules which allow medium sized companies, who probably will not qualify within the definitions of the designated entities, to have a reasonable chance to participate in the offering of PCS and other new telecommunications services.

14. Most importantly, Liberty urges the Commission not to allow combinatorial bidding for the BTAs within each MTA. Liberty and other companies who lack the resources of the largest

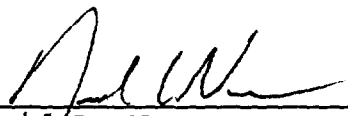


corporations cannot expect to bid competitively for groups of BTA licenses which include the major urban areas. The public in rural BTAs will not benefit fully from new communications offerings if their service providers are primarily interested in the urban markets, and acquired rural BTA licenses incidentally through a combinatorial bid.

Respectfully submitted,

LIBERTY CELLULAR, INC.  
d/b/a KANSAS CELLULAR

By:

  
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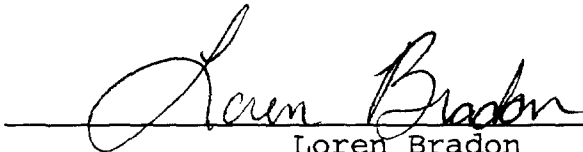
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November 10, 1993

**CERTIFICATE OF SERVICE**

I, Loren Bradon, a secretary in the law offices of Lukas, McGowan, Nace & Gutierrez, Chartered, hereby certify that I have on this 10th day of November 1993 sent, via hand delivery, a copy of the foregoing COMMENTS to the persons named below.

  
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